

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

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4 CHARLES N. BELSSNER,

5 Plaintiff,

6 v.

7 STATE OF NEVADA,

8 Defendant.
9

Case No. 2:15-cv-00672-APG-PAL

**ORDER GRANTING MOTION TO
DISMISS**

(ECF No. 22)

10 Plaintiff Charles Belssner filed this lawsuit against defendant State of Nevada. Belssner
11 claims the State denied him reasonable accommodations for his hearing and speech impairments
12 during various landlord/tenant lawsuits in state court, in violation of Title II of the Americans
13 with Disabilities Act (ADA). The State now moves to dismiss, arguing most of Belssner's Title
14 II claim is time-barred, the timely allegations do not state a claim, and Belssner did not timely
15 serve the State. I grant the motion to dismiss because most of Belssner's allegations are untimely
16 and his timely allegations fail to allege a plausible Title II claim.¹

17 **I. BACKGROUND**

18 Plaintiff Charles Belssner originally filed this action on March 24, 2015 in the Central
19 District of California. ECF No. 1. The case was transferred to this court about a month later. ECF
20 No. 6. Belssner's complaint was screened, and his claims against the Regional Justice Center
21 were dismissed because that is a building and not an entity capable of being sued. ECF No. 14 at
22 4-5. Belssner's claims under 42 U.S.C. § 1983 were also dismissed because the State is not a
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24 ¹ The State also argues Belssner failed to timely serve the complaint. I do not dismiss on
25 this basis because Belssner served the complaint within the time granted by Magistrate Judge
26 Leen. On April 16, 2016, Magistrate Judge Leen ordered that Belssner complete service on or
27 before July 19, 2016. ECF No. 16. After Belssner experienced some difficulties effecting service,
28 Judge Leen extended the time to complete service to October 14, 2016. ECF No. 19. Service was
made on the State of Nevada Office of the Attorney General on October 7, 2016. ECF No. 20.
Consequently, Belssner served the State within the time granted by the court.

1 person for purposes of § 1983. *Id.* at 5. However, Belssner’s claim under Title II of the ADA was
2 not dismissed because he adequately alleged (1) he was a person with a disability due to his
3 speech and hearing impairments; (2) he was denied a public benefit because he was denied access
4 to the courts; (3) he was denied access to the court because his requests for certain
5 accommodations were denied; and (4) this denial of a benefit was by reason of his disabilities. *Id.*
6 at 6-7. Belssner’s Title II claim rests on allegations that he has been a party to numerous
7 landlord/tenant lawsuits in Nevada state court during which he was denied requested
8 accommodations (such as a laptop to communicate with his court reader, an easel, and for the
9 reader to read his opening statement) or where documents were not sent to him.

10 The State moves to dismiss, arguing that almost all of Belssner’s Title II claim is untimely
11 because the underlying state court actions were resolved more than a year before Belssner filed
12 this lawsuit. For those aspects of the claim that are timely, the State argues Belssner has not
13 alleged facts showing he was harmed or that he was denied reasonable accommodations, and the
14 judicially noticeable records of the state court actions show he either prevailed, was given
15 accommodations, or lost for reasons unrelated to the alleged lack of accommodations.

16 Belssner responds by arguing the failure to grant his requests for accommodations resulted
17 in him recovering less than he was entitled to in various lawsuits. He also states that he has been
18 told that the State of Nevada is a “landlord state,” apparently meaning that its laws and/or courts
19 favor landlords. ECF No. 28 at 4-5.

20 **II. ANALYSIS**

21 In considering a motion to dismiss, “all well-pleaded allegations of material fact are taken
22 as true and construed in a light most favorable to the non-moving party.” *Wyer Summit P’ship v.*
23 *Turner Broad. Sys., Inc.*, 135 F.3d 658, 661 (9th Cir. 1998). However, I do not necessarily
24 assume the truth of legal conclusions merely because they are cast in the form of factual
25 allegations in the plaintiff’s complaint. *See Clegg v. Cult Awareness Network*, 18 F.3d 752, 754-
26 55 (9th Cir.1994). A plaintiff must make sufficient factual allegations to establish a plausible
27 entitlement to relief. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007). Such allegations
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1 must amount to “more than labels and conclusions, [or] a formulaic recitation of the elements of a
2 cause of action.” *Id.* at 555.

3 **A. Statute of Limitations**

4 Belssner does not respond to the State’s argument that most of his allegations are time-
5 barred. I therefore grant this portion of the motion as unopposed. *See* LR 7-2(d).

6 Even if Belssner had opposed, the State is correct that much of the Title II claim is barred
7 by the statute of limitations. “Title II of the ADA does not contain an express statute of
8 limitations.” *Sharkey v. O’Neal*, 778 F.3d 767, 770 (9th Cir. 2015). The court therefore borrows
9 the limitations period for the “most analogous state-law claim, so long as it is not inconsistent
10 with federal law or policy to do so.” *Id.* (quotation omitted).

11 Title II of the ADA provides that “no qualified individual with a disability shall, by reason
12 of such disability, be excluded from participation in or be denied the benefits of the services,
13 programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42
14 U.S.C. § 12132. Nevada has a similar statutory provision. Under Nevada Revised Statutes
15 § 651.070, “[a]ll persons are entitled to the full and equal enjoyment of the goods, services,
16 facilities, privileges, advantages and accommodations of any place of public accommodation,
17 without discrimination or segregation on the ground of . . . disability” Section 651.090
18 provides a private right of action for violations of § 651.070. The limitations period for bringing
19 a claim under § 651.090 is “1 year from the date of the act complained of.” Nev. Rev. Stat.
20 § 651.120.

21 Consequently, Belssner had one year from the date of each act of disability discrimination
22 about which he complains to file suit. The State has presented state court records² showing that
23 most of the state court lawsuits about which Belssner complains had been closed for more than
24 one year before this complaint was filed, or had no activity out of which Belssner’s Title II claim

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27 ² I may consider the state court records without converting the motion to dismiss into one
28 for summary judgment because they are public records subject to judicial notice. *Lee v. City of*
L.A., 250 F.3d 668, 688-89 (9th Cir. 2001) (citing Fed. R. Evid. 201).

1 could arise within one year prior to his complaint being filed. I will not go through each case in
2 detail here. It suffices to refer the parties to the State's brief and accompanying exhibits. Thus, to
3 the extent Belssner's Title II claim is based on an alleged denial of accommodations in any of the
4 following cases, his claim is dismissed with prejudice as untimely:

5 *Chris Richards v. Keys of Las Vegas*

6 *Belssner v. Country Club Shadows*

7 *Belssner v. Boyd Gaming*

8 *Belssner v. Ron Bell*

9 *Belssner v. Blom (Case #11E012478)*

10 *Belssner v. Blom (Case #11C012032)*

11 *Belssner v. Atlas Group, LLC*

12 *Atlas Group v. Belssner*

13 **B. Failure to State a Claim**

14 The State argues the remaining allegations, even if timely, fail to state a claim because
15 Belssner prevailed in one case, he has not shown how a denial of accommodations harmed him in
16 another case, and his other allegations have nothing to do with the State. Belssner does not
17 respond to the specific allegations the State identifies.

18 **1. *Belssner v. Bobs Autodynamics***

19 Belssner alleges in the complaint that he prevailed in the *Bobs* action but that he was not
20 given a laptop or easel as requested. ECF No. 15 at 5. The State argues Belssner's Title II claim
21 based on the *Bobs* case should be dismissed because Belssner was provided with an
22 accommodation and he prevailed in that action.

23 The state court record shows Belssner requested an accommodation and that request was
24 granted in part, although it does not state what was granted and what was denied. ECF No. 22-7.
25 The record also shows Belssner prevailed by obtaining an \$80 judgment against Bobs. *Id.*

26 Absent further factual development, Belssner's complaint does not plausibly allege he was
27 excluded from participation in or denied the benefits of the state court system or that he was
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1 discriminated against on account of his disability by being denied a laptop or easel; some
2 accommodation was provided, he does not identify why that accommodation was insufficient,
3 and he prevailed in the state court case. *See Tennessee v. Lane*, 541 U.S. 509, 531-32, (2004)
4 (stating “Title II does not require States to employ any and all means to make judicial services
5 accessible to persons with disabilities,” as it requires “only reasonable modifications that would
6 not fundamentally alter the nature of the service provided” and that would not “impose an undue
7 financial or administrative burden, threaten historic preservation interests, or effect a fundamental
8 alteration in the nature of the service” (quotation omitted)); *Thompson v. Davis*, 295 F.3d 890,
9 895 (9th Cir. 2002) (stating that one element of a Title II claim is that the plaintiff was “either
10 excluded from participation in or denied the benefits of the public entity’s services, programs, or
11 activities, or was otherwise discriminated against by the public entity”). However, because it is
12 possible that Belssner could amend to allege facts in support of a Title II claim in relation to these
13 allegations, this portion of his Title II claim is dismissed without prejudice.

14 2. *Belssner v. Ferranti*

15 Belssner’s complaint alleges that in relation to the *Ferranti* action, he attempted to file a
16 notice of appeal on September 8, 2014, but state court personnel requested a filing fee and a bond,
17 told him he had to file a statement of facts, and that certain forms had to be completed. ECF No.
18 15 at 7-8. Belssner eventually was able to fill out the forms, prepare the notice of appeal, and pay
19 for the bond, although it required him to walk over two miles in each direction between the
20 library and the court. *Id.* at 8. The State argues that Belssner was granted an accommodation in
21 this case and his notice of appeal was filed late, so he lost the lawsuit for a reason unrelated to his
22 disability.

23 The state court record shows Belssner requested an accommodation and that request was
24 granted in part, although it does not state what was granted and what was denied. ECF No. 22-10.
25 The state court record shows that Belssner’s appeal was denied but it does not state why. *Id.* The
26 case was a small claims action in justice court. *Id.* The final order denying Belssner’s objections
27 in justice court was entered on August 14, 2014. *Id.* Belssner filed a notice of appeal on
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1 September 8. *Id.* That is beyond the five-day window for filing appeals from a small claims case
2 in justice court. Justice Ct. R. Civ. P. 98.

3 Belssner's complaint describes some difficulties he had in getting his notice of appeal
4 filed. Belssner states that he was told a particular form had to be filled out legibly, but he
5 responded that he could not do so due to "tremors." ECF No. 15 at 8. Belssner alleges that at first
6 he was told he could fill out the form online, but then he was told it had to be printed and filled
7 out manually. Belssner alleges he had to walk over two miles to the library to use a typewriter,
8 and then walk back to the courthouse to file the form.

9 It is unclear from the complaint whether Belssner's tremors relate to a disability such that
10 the failure to provide an accommodation may have violated Title II. The disabilities Belssner
11 identifies in his complaint are hearing and speech related. He also does not allege sufficient facts
12 about what accommodations he requested, what accommodations were denied or granted, why
13 the accommodation given was insufficient, or the nature of the form he was asked to fill out (*i.e.*,
14 was it lengthy such that providing assistance would have been burdensome).

15 I therefore will dismiss the portion of Belssner's Title II claim based on what occurred
16 during the *Ferranti* case. However, I grant leave to amend to add factual allegations (if they
17 exist) that plausibly would support a Title II claim in relation to his allegations that (1) he was
18 denied reasonable accommodations during the underlying case and (2) he was denied reasonable
19 accommodations in filling out a form required to file his notice of appeal. *See McGary v. City of*
20 *Portland*, 386 F.3d 1259, 1266-67 (9th Cir. 2004) (explaining that the "crux of a reasonable
21 accommodation claim is a facially neutral requirement that is consistently enforced" that burdens
22 disabled persons "in a manner different and greater than it burdens others, and, therefore,
23 necessitates accommodation" (quotation omitted)). Absent more detailed allegations about
24 Belssner's disabilities, what accommodations were requested in relation to this case, what
25 accommodations were offered and/or provided, and how he was either excluded from
26 participation in or denied the benefits of access to the State's courts (or was otherwise
27 discriminated against by the State), there are no allegations to plausibly support a Title II claim.
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1 3. *Allegations About Other Cases Not Involving Belssner*

2 Belssner's complaint refers to several actions or incidents that do not appear to be related
3 to his Title II claim against the State. For example, he references that he informed the State
4 Contractors Board and the police about a homeowners association with an unlicensed contractor
5 who embezzled over \$1 million. He also references that someone named Kathy Rouse
6 encouraged him to file a motion to rescind an order of summary eviction in relation to Oasis
7 Winds. And he alleges he has attempted to obtain aid from organizations such as Protection &
8 Advocacy Inc. of San Diego, Desert Legal Aid, and the Nevada Disability Advocacy Center, but
9 those organizations have not assisted him. *Id.* at 11. It is unclear what relation, if any, these
10 allegations have to Belssner's Title II claim against the State. To the extent they are meant to
11 form the basis of a Title II claim (as opposed to background or contextual allegations), they are
12 dismissed for failure to plausibly allege the State violated Title II.

13 **III. CONCLUSION**

14 IT IS THEREFORE ORDERED that defendant State of Nevada's motion to dismiss
15 **(ECF No. 22) is GRANTED.** Plaintiff Charles Belssner's Title II claim is dismissed with
16 prejudice to the extent it rests on allegations related to the following cases:

17 *Chris Richards v. Keys of Las Vegas*

18 *Belssner v. Country Club Shadows*

19 *Belssner v. Boyd Gaming*

20 *Belssner v. Ron Bell*

21 *Belssner v. Blom (Case #11E012478)*

22 *Belssner v. Blom (Case #11C012032)*

23 *Belssner v. Atlas Group, LLC*

24 *Atlas Group v. Belssner*

25 The remainder of his Title II claim is dismissed without prejudice.

26 IT IS FURTHER ORDERED that if plaintiff Charles Belssner chooses to amend his
27 complaint to correct the deficiencies identified in this order, he must file an amended complaint
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1 on or before August 14, 2017. Failure to file an amended complaint by that date will result in this
2 case being closed.

3 DATED this 12th day of July, 2017.

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6 ANDREW P. GORDON
7 UNITED STATES DISTRICT JUDGE
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